

APPENDIX K

**DRAFT MEMORANDUM OF AGREEMENT
CONCERNING
GREAT FALLS PORTAGE
NATIONAL HISTORIC LANDMARK**

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**MEMORANDUM OF AGREEMENT
PURSUANT TO CODE OF FEDERAL REGULATIONS
TITLE 36, PART 800.6(b)(1)**

Among

The United States Department of Agriculture, Rural Utilities Service,
The Montana State Historic Preservation Office,
The United States Department of the Interior, National Park Service
The United States Department of Agriculture, Forest Service,
The Advisory Council on Historic Preservation,
Southern Montana Electric Generation & Transmission Cooperative, Inc.

Regarding

Southern Montana Electric Generation & Transmission Cooperative, Inc.
Highwood Generating Station
Cascade County
Great Falls, Montana

WHEREAS, the United States Department of Agriculture, Rural Utilities Service (RUS) is considering a loan guarantee application from the Southern Montana Electric Generation & Transmission Cooperative, Inc. (SME) in order for SME to construct a 250-megawatt coal fired power plant, known as the Highwood Generating Station (HGS), and 6-megawatts of wind generation (collectively, the Project), at a site near Great Falls, Montana; and

WHEREAS, RUS's provision of said loan guarantee for the Project would be a federal undertaking (undertaking) as defined in the National Historic Preservation Act of 1966 (NHPA); and

WHEREAS, RUS has prepared an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA) for the Project and has used the process and documentation required for NEPA to comply with the NHPA's Section 106 requirements pursuant to 36 CFR § 800 et seq.; and

WHEREAS, RUS has established the undertaking's area of potential effects (APE) as shown in the Highwood Generating Station draft EIS: a) on pages 3-73 through 3-89; b) on pages 4-81 through 4-94; and c) in Appendix G on pages 1 through 47; and

WHEREAS, RUS has determined that the undertaking will have an adverse visual effect on the Great Falls Portage National Historic Landmark (NHL); and

WHEREAS, RUS has consulted with and requested the comments of the Montana State Historic Preservation Office (SHPO), the National Park Service (NPS), the United States Forest Service (USFS) and the Advisory Council on Historic Preservation (Council) pursuant to Section 106 of NHPA and its implementing regulations, Protection of Historic and Cultural Properties (36 CFR Part 800); and

WHEREAS, RUS has also invited and consulted with other governmental and non-governmental consulting parties and has invited the undersigned parties to be signatories to this MOA pursuant to 36 CFR § 800.6(c)(2): and

WHEREAS, the parties recognize that the County Commissioners of Cascade County, the county in which the HGS is proposed to be sited in, has approved rezoning for the proposed location. The HGS is proposed to be sited in Sections 24 and 25, Township 21 North, Range 5 East, M.P.M., Cascade County, Montana. Approximate UTM coordinates of the facility site (specifically the Unit 1 stack) are Zone 12, Easting 497.3 kilometers, and Northing 5,266.4 kilometers. Site elevation is approximately 3,310 feet above mean sea level.

NOW, THEREFORE, RUS, the SHPO, NPS, USFS, the Council, and SME agree that in accordance with RUS' decision to proceed with approval of the undertaking, RUS shall ensure that the following stipulations are implemented in order to take into account the adverse effects of the undertaking on the NHL.

STIPULATIONS

The RUS, in cooperation the SHPO, NPS, USFS, the Council, and SME shall ensure that the following measures are carried out prior to the Project proceeding to construction:

[Insert negotiated mitigation measures]

III. Dispute Resolution.

A. Should any signatory to this MOA object in writing to RUS regarding any action carried out or proposed with respect to the undertaking or implementation of this MOA, RUS shall consult with the objecting party to resolve the objection. If after initiating such consultation, RUS determines that the objection cannot be resolved through consultation RUS shall forward all documentation relevant to the objection to the Council, including RUS's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, the Council shall exercise one of the following options:

1. Advise RUS that the Council concurs in RUS's proposed response to the objection, whereupon RUS will respond to the objection accordingly;

2. Provide RUS with recommendations, which RUS shall take into account in reaching a final decision regarding its response to the objection; or
3. Notify RUS that the objection will be referred for comment pursuant to 36 CFR § 800.7(a)(4), and proceed to refer the objection and comment. RUS shall take the resulting comment into account in accordance with 36 CFR § 800.7(c)(4) and Section 110(l) of NHPA.

B. Should the Council not exercise one of the above options within 30 days after receipt of all pertinent documentation, RUS may assume the Council's concurrence in its proposed response to the objection.

C. RUS shall take into account any Council recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; RUS's responsibility to carry out all actions under this agreement that are not the subjects of the objection shall remain unchanged.

IV. Amendment/Termination.

A. Any consulting party to this Agreement may request that it be amended, whereupon the parties will consult to consider such amendment in accordance with 36 C.F.R. 800.5(e)(5).

B. RUS shall not alter the specifications under this called for under this MOA without first affording the parties to this MOA the opportunity to review the proposed change and determine whether it will require that revisions be made in this agreement. If revisions to this MOA are required, RUS shall consult in accordance with 36 CFR Part 800 to make such revisions.

C. On or before January 30th of each year until RUS, SHPO and the Council agree in writing that the terms of this MOA have been fulfilled, RUS shall prepare and provide an annual report to the Council, SHPO, and the other signatories addressing the following topics:

1. Progress in constructing the HGS;
2. Progress in completing the On-site mitigations described herein;
3. Progress in completing the Off-site mitigations described herein;
4. Any problems or unexpected issues encountered during the year; and
5. Any changes that RUS believes should be made in implementing this MOA.

RUS shall ensure that its annual report is made available for public inspection, that potentially interested members of the public are made aware of its availability, and that interested members of the public are invited to provide comments to the SHPO, Council, as well as to RUS. The signatories to the MOA shall review the annual report and provide comments to RUS. Non-signatory parties to this MOA may review and comment on the annual report at their discretion. Based on this review, RUS, SHPO, and the Council shall determine whether this MOA shall continue in force, be amended, or be terminated.

Any signatory as defined at 36 C.F.R. 800.6(c)(1) may terminate this Agreement by providing thirty days written notice to the consulting parties, provided that the parties will consult during that period to seek agreement on amendments or other actions that would avoid termination. In the event of termination, RUS will comply with 36 C.F.R. 800.4 through 800.6.

VI. Satisfaction of Section 106 Responsibilities.

Execution and implementation of this MOA evidences that RUS has satisfied its Section 106 responsibilities for all actions related to the HGS undertaking.

VII. Counterparts.

This MOA may be signed by the parties as one or more identical, duplicate documents with the same effect as if the parties had all signed a single document.

VIII. DATE OF IMPLEMENTATION AND DURATION.

This Agreement will take effect on the date of the last signature. It shall be null and void if its terms are not carried out within five years from the date of its execution, unless the signatories as defined at 36 C.F.R. 800.6(c)(1) agree in writing to an extension for carrying out its terms.

SIGNATORIES

SIGNED:

UNITED STATES DEPARTMENT OF AGRICULTURE, RURAL UTILITIES SERVICE
Mark S. Plank, Director Engineering and Environmental Staff and Federal Preservation
Officer

By: _____ Date: _____

SIGNED:

MONTANA STATE HISTORIC PRESERVATION OFFICE

By: _____ Date: _____

SIGNED:

UNITED STATES DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE

By: _____ Date: _____

SIGNED:

UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE

By: _____ Date: _____

SIGNED:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:_____ Date:_____

SIGNED:

SOUTHERN MONTANA ELECTRIC GENERATION AND TRANSMISSION COOPERATIVE,
INC.

By:_____ Date:_____

DRAFT